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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LISA R. MARSHALL,

Defendant and Appellant.

B260551

(Los Angeles County
Super. Ct. No. MA009179)

APPEAL from an order of the Superior Court of Los Angeles County,
Kathleen Blanchard, Judge. Affirmed.

Chris Blaylock for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and
Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Lisa R. Marshall appeals the trial court's order denying her motion for dismissal pursuant to Penal Code section 1203.4.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1995 Marshall pleaded no contest to possession of cocaine base for sale (Health & Saf. Code, § 11351.5) pursuant to a negotiated plea. The court suspended imposition of sentence and granted felony probation for five years, subject to various terms and conditions, including that she serve 180 days in county jail. On May 15, 1995, Marshall failed to appear to begin her jail term. Her probation was revoked.² On February 16, 2011 Marshall's probation was revoked and reinstated with a probation expiration date of March 7, 2016.

On September 22, 2014, Marshall filed a petition for dismissal pursuant to section 1203.4. Attached to the petition was a letter from the North Carolina Department of Public Safety, dated July 24, 2014. It stated that Marshall had been placed on probation in California; was accepted for transfer by the state of North Carolina in April 2012 with certain conditions; and Marshall had been assessed and placed into the department's lowest risk/needs category. The letter stated: "As of this date, the defendant has complied with all terms and conditions of her probation. The defendant paid the state of North Carolina probation supervision fees in full, completed 240 hours of community service, successfully discharged from substance abuse treatment, provided no positive drug screens this period of supervision, remains in full compliance with monthly online reporting as directed by her probation officer, and has no pending charges as indicated by CJ Leads."

Marshall's declaration was also attached to the petition. It stated that as of July 24, 2014, she had complied with all terms of her probation, including payment of all fines and completion of required community service hours. She wished to have her

¹ All further undesignated statutory references are to the Penal Code.

² We take judicial notice of the trial court's file in this matter. (Evid. Code, §§ 452, subd. (d), 459.)

record expunged so she could “move on with” her life. She has been working as a cashier at a retail store and has been promoted to Customer Service Manager. She has had no contacts with law enforcement since her conviction, and does not drink alcohol or “do any type of drugs.” She has “not re-committed” and has been an outstanding citizen, paying taxes, contributing to the community, and taking care of her elderly parents. She intends to help care for her mother, and her stepfather who has health issues.

On September 22, 2014, the trial court summarily denied the petition. Marshall appeals the trial court’s order.

DISCUSSION

Marshall contends that the trial court abused its discretion when it denied her petition. We disagree.

“Under Penal Code section 1203.4 . . . , a defendant who has been convicted of a crime and granted probation is entitled to have his record expunged after the period of probation has terminated ‘if he comes within any one of three fact situations: (a) he has fulfilled the conditions of his probation for the entire period; (b) he has been discharged before the termination of the period of probation; or (c) in any case in which a court, in its discretion and the interests of justice, determines he should be granted relief.’ ”

(*People v. McLernon* (2009) 174 Cal.App.4th 569, 571-572; *People v. Butler* (1980) 105 Cal.App.3d 585, 587.)³ Where the propriety of the trial court’s order on a petition

³ Section 1203.4, subdivision (a)(1) provides in pertinent part: “In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all

for relief under section 1203.4 turns on the interpretation of the relevant statutory provisions, we independently review the order. (*People v. Seymour* (2015) 239 Cal.App.4th 1418, 1428.)

Thus, “there are three situations in which a defendant may be entitled to have his or her conviction dismissed. The first two—when the defendant fulfilled the conditions of probation for the entire probationary period or when the defendant was discharged before the termination of the period of probation—require the court to grant the requested relief if the conditions are met. The last requires the court to determine whether, in its discretion and the interests of justice, the relief should be granted.” (*People v. McLernon, supra*, 174 Cal.App.4th at p. 574; *People v. Holman* (2013) 214 Cal.App.4th 1438, 1459.)

Marshall contends that because she has fulfilled the conditions and terms of probation, the trial court was required, as a matter of law, to grant the petition. Alternatively, she argues that denial of her petition was an abuse of discretion in light of her post-conviction record. She argues that since her 1995 conviction, she has “led an honest, upright, and moral life evidenced by her employment” and is the type of candidate the Legislature had in mind when it passed the law allowing expungement.

While Marshall’s progress is laudable, her argument fails because, as she admits, she has not yet completed probation. “Qualification for relief under the first scenario—fulfilling the conditions of probation during the entire probationary period—requires exactly that: fulfillment of *all* the conditions of probation throughout the *entire* period of probation. Any violation of any of the probationary terms will disqualify a probationer from seeking dismissal under the first scenario.” (*People v. Holman, supra*, 214 Cal.App.4th at p. 1459.) Since Marshall has not yet completed probation, she cannot have met the requirement that she fulfill all conditions throughout the entire period. Marshall obviously does not qualify under the second scenario, which applies only if

penalties and disabilities resulting from the offense of which he or she has been convicted.”

probation has been terminated and the defendant discharged before the probationary period has expired. (*Id.* at p. 1460; *People v. Chandler* (1988) 203 Cal.App.3d 782, 790.)

Finally, section 1203.4 does not allow expungement at the court's discretion until after probation has terminated. The statute provides: "In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, *at any time after the termination of the period of probation*, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty." (§ 1203.4, subd. (a)(1), italics added.) The statute's plain language makes clear that expungement is unavailable until the defendant has completed or been discharged from probation.⁴

Marshall may, of course, petition for dismissal under section 1203.4 once she has completed her probationary term. (*People v. McLernon, supra*, 174 Cal.App.4th at p. 577.)

⁴ Given that Marshall would not have been eligible for dismissal under section 1203.4 in any event, we do not reach Marshall's contention that the trial court was required to hold a noticed hearing on her motion.

DISPOSITION

The order is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

JONES, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.